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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,

Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

JOSEPH S. SEIDEL, P.A.,
22 Park Place,
Morristown, New Jersey 07960,
Counsel for Petitioners.

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10 McQuillin, Municipal Corporations (1966 Revised Edition):

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No.

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,

Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

Petitioners pray that a writ of certiorari issue to review the order of the Supreme Court of New Jersey entered on October 5, 1971. Said Order denied Petitioners' petition for certification to review the Superior Court of New Jersey, Appellate Division's denial of Petitioners' Motion for Leave to Appeal from a Summary Judgment

entered in the Law Division of the Superior Court of New Jersey.

Opinions Below

The letter opinion of the Law Division of the Superior Court of New Jersey is set forth in Appendix D at 6a. The denial of Petitioners' motion for leave to appeal is set forth in Appendix B at page 2a. The Order of the Supreme Court of New Jersey denying Petitioners' petition for certification is set forth in Appendix A at page 1a.

Jurisdiction

On October 5, 1971 the Supreme Court of New Jersey entered a final order denying Petitioners' Petition for Certification. To review that decision and the underlying denial of Petitioners' Motion for Leave to Appeal of the Superior Court, Appellate Division and the opinion of the Superior Court of New Jersey, Law Division, petitioners invoke the jurisdiction of this Court pursuant to 28 U.S.C. § 1257 (3).

Questions Presented

(1) May a condemning authority constitutionally contract to sell private property a year in advance of institution of condemnation proceedings to acquire it and without notice to the owner?

(2) Does not sale of private property by a condemning authority to a private third party a year in advance of condemnation and without notice to the property

owners represent a confiscation of property without due process of law and a basis for certiorari?

(3) Is due process of law satisfied by publication of a single notice of solicitation for bids a year in advance of condemnation proceedings, which notice is devoid of the names and addresses of the affected property owners and devoid of any description of the individual lots?

Constitutional and Statutory Provisions Involved

This petition involves the application of the Fifth and Fourteenth Amendments to the Constitution of the United States and section 20, Article One of the New Jersey Constitution of 1947.

Statement of the Case

Since 1954, over 14 years, Florence Leff has been the record owner of a parcel of land situate in the City of East Orange, New Jersey commonly known as Lot 6 in Block 46, 40-44 Hedden Place.

Lincoln Electric Products Co. is a Leff family-owned corporation which has occupied the subject premises for more than 14 years.

On April 30, 1969, the Respondent East Orange Housing Authority, without advance notice to the petitioners, advertised for sale, in a local East Orange newspaper, in the so called Legal Advertisements, 3 parcels of land. These parcels were described therein only as "H-9, H-10 and H-11". Fixed sale prices, substantially less than fair market values, were stated in the advertisement.

The legal advertisement was devoid of: metes, bounds, block, lot, street addresses of the parcels and names of the record owners. In fact nothing in the advertisement linked or could have linked petitioners' lands and premises as forming part of the parcels for which bids were solicited.

While each parcel consisted of numerous lots, nothing in the advertisement indicated this.

The Respondent East Orange Housing Authority admitted it sent *personal* notices of the solicitation for bids by mail to 22 strangers, but *not* to Petitioners (*the record owners and lessee of the property*).

Approximately one month following the advertisement and still without the knowledge of or notice to the Petitioners, the Respondent East Orange Housing Authority awarded parcels II-9, II-10 and II-11, still owned by Petitioners and others, to the Respondent Metro Motors, Inc. a private corporation, for the avowed purpose of constructing an automobile showroom.

Approximately *one year after* advertising and awarding Petitioners' property, the Respondent East Orange Housing Authority instituted condemnation proceedings to acquire Petitioners' premises.

Despite Petitioners' protests that they at all times were ready, willing and able to pay more for the parcel II-9 than the fixed price at which it was struck off and that they would construct thereon any type of structure suitable to Respondent East Orange Housing Authority, their pleas fell on deaf ears and this course of appeal began.

Nevertheless, the Respondent Metro Motors, Inc. proceeded to build its automobile showroom—but *not* on all 3 parcels awarded to it, but only on one: H-11. Therefore, the issues herein raised, as a practical matter, are moot as to parcel H-11.

Parcels H-9 and H-10, however, are still vacant and the Respondent East Orange Housing Authority has not yet closed title to these parcels with the Respondent Metro Motors, Inc.

The Superior Court of New Jersey, Law Division, on April 19, 1971, by summary judgment (App. C, p. 4a) and without citation of authority, in its letter opinion of March 30, 1971 (App. D, p. 6a) dismissed Petitioners' protests as to the "no-notice" method by which the East Orange Housing Authority had solicited for bids and awarded the Petitioners' lands to others a year in advance of condemnation, without notice to Petitioners or opportunity to Petitioners to reacquire and renew the premises they had owned and occupied for over 14 years. It further dismissed Petitioners' revelation of a material discrepancy in parcel descriptions appearing on the maps constituting part of the offering documents. The Superior Court, Appellate Division refused to stay the proceedings or to grant Petitioners' Motion for Leave to Appeal. On October 5, 1971, the New Jersey Supreme Court denied Petitioners' Application for Writ of Certiorari to review the action of the Appellate Division and the Law Division.

Reasons for Granting the Writ

Inherent in this application is the question of whether the rule of fundamental fairness has been violated by

the arbitrary and futile method of notice by publication employed by the East Orange Housing Authority a year in advance of condemnation.

Simply stated: Is a published legal advertisement a year in advance of condemnation "notice" to affected property owners of impending sale of their properties when it contains neither their names nor addresses nor any description of their individual properties?

Does not such action constitute a de facto "taking" without due process of law?

The questions beg the answer. This Court struck down analogous advertising in *Schroeder* v. *New York*, 371 U. S. 208, 9 L. ed. 2d 255, 83 S. Ct. 279, 89 A. L. R. 2d 1398 (1962). There the issue was whether notice by publication, admittedly in compliance with and pursuant to statute, in 4 newspapers for each of 6 weeks and by posting in 20 conspicuous places, constituted compliance with due process of law. The publicized notice contained neither the names and addresses nor property descriptions of the affected property owners. Factually, the notice there related to the City's right to divert certain river waters. There, as here, the City's inherent right to take private property was not contested.

There, as here, the names and addresses of the property owners were "readily ascertainable from both deed records and tax rolls" (372 U. S. at 210).

The Supreme Court there held that even repeated newspaper publication and posted notices "did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires." (371 U. S. at 211).

We urge that the principles of *Schroeder* apply with even greater force to the instant case since the advertisement in the instant case, similarly deficient, was published only once.

The evils inherent in notice by publication were clearly spelled out in *Schroeder*:

> "As was emphasized in Mullane, the requirement that parties be notified of proceedings affecting their legally protected interests is obviously a vital corollary to one of the most fundamental requisites of due process—the right to be heard. 'This right . . . has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.' 339 U. S. at 314. * * *"

The Court, in *Schroeder*, adopted the language of *Mullane*, which is particularly applicable here:

> "'chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention.' 339 U.S., at 315." (371 U. S., at 212).

Thus the Court held in *Schroeder* that ". . . notice by publication is not enough with respect to a person whose

name and address are known or very easily ascertainable and whose legally protected interests are directly affected by the proceedings in question. 'Where the names and post office addresses of those affected by a proceeding are at hand, the reasons disappear for resort to means less likely than the mails to appraise them of its pendency. 339 U. S., at 318.'" (371 U. S., at 212, 213). See, too, *U. S.* v. *Chatham*, 323 F. 2d 95 (C. A. 4 N. C. 1963) wherein the Court of Appeals pointed out that the remedy of a proceeding to assess "just compensation" may not be adequate where jurisdiction *in rem*, on proper notice, had not been obtained. It is no answer to say that proceedings to condemn Petitioners' property were instituted ultimately a year later and that Petitioners could participate in *that* proceeding. By that time, Petitioners' right to be included in the class of bidders was already lost to them. In effect, Petitioners' property was effectively taken and foreclosed a year before the condemnation proceedings were instituted!

As was stated in *New York* v. *New York, N. H. & H. R. Co.*, 344 U. S. 293, 296, 97 L. ed. 333, 336, 73 S. Ct. 299: "[N]otice by publication is a poor and sometimes a hopeless substitute for actual service of notice . . . [I]ts justification is difficult at best."

See, also, *Walker* v. *Hutchinson City*, 352 U.S. 112, 1 L ed 2d 178, 77 S Ct 200, to the same effect.

A single letter could have discharged the Housing Authority's obligation to Petitioners. They sent out 22 personal notices to others, why not one to Petitioners?

The gravamen of the complaint here is that Petitioners were effectively excluded without due process of law from the class of potential redevelopers of these parcels. See, *contra*, *Levin* v. *The Township Committee of the Town-*

ship of Bridgewater, 57 N. J. 506, 542 (1971) wherein the Plaintiff was there held *not* to have been excluded from that class:

> "* * * But no official action has been taken which excluded Plaintiff Levin from consideration as a candidate for selection as the overall developer of the Triangle after the blight declaration. In fact, it seems plain from the statements of municipal officials that his application, if made, will receive good faith evaluation and fair treatment."

Petitioners here seek nothing more than an opportunity to be considered as a redeveloper, good faith evaluation and fair treatment. Each of these considerations has been shamefully and obstinately denied them by the Respondent Housing Authority.

One entire year in advance of condemnation the following advertisement in "legal" size type and style appeared in the "Newark Evening News". In pertinent part it read:

> "Invitation for Proposals
>
> The Housing Authority of the City of East Orange invites proposals for the purchase and redevelopment of one or more of the hereafter described industrial lands located in its Fourth Ward Urban Renewal Project Area:
>
> Parcel Numbered H-9, Total Area Square Ft. 85,502, Land Use Industrial, Fixed Sale Price $.63, Fixed Sales Price $53,866.
>
> Parcel Numbered H-10, Total Area Square Ft. 85,325, Land Use Industrial, Fixed Sale Price Sq. Ft. $.63, Fixed Sales Price $71,544.

> Parcel Numbered H-11, Total Area Square Ft. 20,463, Land Use Industrial, Fixed Sale Price Sq. Ft. $.70, Fixed Sales Price $14,324.
>
> The above lands are offered for sale and redevelopment either individually or as one parcel pursuant to applicable Federal and State Housing Laws. Specifically, the lands must be developed in accordance with the provisions of the East Orange Urban Renewal Plan which constitutes part of the proposal Documents."
>
> * * *

Additionally, the Housing Authority sent personal letters to 22 persons or entities they thought might be interested in the property. They did not include the owner or occupant because "they never expressed an interest in acquiring the property." (Weaver affidavit submitted as part of Respondent's reply to Petition for Stay).

Thus, parcels H-9, H-10 and H-11 were awarded to a private corporation, Metro Motors, Inc. in June of 1969, 10 months before condemnation proceedings were instituted—all without the knowledge of, or notice to Petitioners.

One of the points made below and mentioned in the trial court's opinion was the admitted discrepancy between the land acquisition map and the land disposal map (PT Da 26-Da 28):

> "* * * It is also undisputed that a discrepancy exists between the land acquisition map and the land disposal map in that the former shows Parcel H-9 lying completely contiguous with Parcel H-10, whereas the land acquisition map shows a 'Lot 7,' not to be acquired, as lying between Parcels H-9 and H-10."

This is dismissed as inconsequential by the Trial Court since:

> "* * * It is conceded that here the plaintiff was under no obligation to advertise for bids and was in fact free to negotiate a redevelopment contract with any one or more redevelopers which it might have selected. * * *"

But, the Court correctly noted that the method chosen—solicitation for bids—". . . was an option which it pursued for reasons of the public advantage in its having a broader selection of prospective redevelopers from which to choose. * * *" (App. D, pp. 8a, 9a)

Said the Court (Da 72-43):

> "* * * If, by the ineptness of the advertisement, plaintiff foreclosed itself from having the benefit of defendant's bid, this is not something for which defendant is entitled to relief. * * *"

This conclusion treats the owner and occupier of the subject premises as less than the equal of 22 strangers to the property.

Further, the conclusion ignores the significant map discrepancy above-mentioned. Any prospective bidder who would submit a proposal, *at the fixed price* called for in the solicitation, would have to be judged in part upon "design" for redevelopment. With one map showing contiguity of tracts and one map showing non-contiguity of tracts, confusion, design limitation and discouragement *must* have affected even those prospects who were furnished with detailed plans. Shall we disregard this also? Exhibit A to the affidavit of Miss Weaver, mentioned *supra*, shows that HUD never approved acquisition of that

intervening lot until *after* the advertisement had been run and *after* bids had been received. Shall this, too, be ignored?

The gravamen of the Respondent's position seems to be that since, initially, it might have proceeded to redevelop the subject parcels by direct negotiation, *no* defects in the prescribed prerequisites for the method chosen can be cause for redress.

The fallacy of this contention lies in the supposition that the Housing Authority was free to change its chosen method or procedure at any time.

Exhibit D (HUD procedures) to the Weaver affidavit of September 16, 1971 (submitted as part of Respondent's Reply to Petition for Stay) is enlightening: page 1 (10/69) indicates that after choosing one of the methods available (here "Fixed-Price Competition"), "If the LPA has met certain prerequisites, and has elected to adopt one of the standard methods of offering land to a private redeveloper, it may offer the land *in accordance with the procedures defined below*, and in Section 2 of this Chapter, without obtaining prior concurrence of the Regional Office." (Emphasis mine).

Thus the prerequisites and procedures there mandated apply with equal force to *all* the methods.

Page 4 (2/68) of the same Exhibit to that affidavit reveals that prior to issuance of invitation for proposals:

> (1) land acquisition, site clearance etc. *shall* have progressed to the point that title to, or possession under a lease may be delivered within a "reasonable" time after selection:
>
> (2) The governing body of the Local Project Authority *shall* have adopted a resolution

(a) Approving the offering

(b) Approving the method of selecting the developer

(c) Approving the price;

(3) Counsel *shall* have furnished a written legal opinion that the proposed procedure conforms to law.

Once all the foregoing has been completed, *then* the Invitation for Proposals is to be published—and it *must* be published (Weaver Affidavit, Exhibit D, page 1 (10/69) chapter 4. Selection of Redevelopers):

"INVITATION FOR PROPOSALS

The invitation for proposals or bids is the formal public notice of the offering of the land. It *shall* consist of publication in one or more newspapers of general circulation in the locality, *and* the mailing of notices to all persons and firms that have signified a bona fide interest in acquiring any of the land in the offering.

The time between first publication and the cutoff date, and the content of the invitation for proposals, will be determined by the method of selecting the redeveloper; the type of land, and the extent of promotion that has preceded the invitation. *The objective is to inform potential redevelopers of the proposed disposal in sufficient time to prepare and submit their proposals.*

"The information contained in the invitation, as a minimum, shall include:

(1) Identification of land to be offered.

* * *

"The offering documents *shall* contain:

* * *

(3) A description of the property for which proposals are invited, including:

(a) Legal or other description sufficient to identify *clearly* the boundaries and area of the land involved, together with a map or plat showing the location of the land in the project area." (Emphasis mine)

* * *

Thus it appears that the Respondent Authority

(1) had no justification for advertising or soliciting for bids a year in advance of institution of proceedings to acquire the land and, even then,

(2) failed to clearly identify the land to be offered; and

(3) compounded the failure of clear identification by the discrepancy in the maps comprising part of the offering documents; and

(4) failed to inform the owners and occupiers of the lands of the solicitation for bids.

If a particular mode of advertising for bids is specified, that mode must be substantially followed. *Wilson* v. *Blanton*, 226 Ky 518, 11 SW 2d 427 ( ); *In re Colling*, 108 N. Y. 666, 15 NE 894 (Ct. Appeals N. Y. 1888); *In re Dennis*, 45 Hun 391, affd 108 N. Y. 364, 15 NE 611 (Ct. Appeals N. Y. 1888); 10 McQuillin, Municipal Corporations 1966 Revised Edition, section 29.58, page 386.

Similarly, a defect that restricts or stifles competition will invalidate an award of contract. *Asbury Park Press, Inc.* v. *Asbury Park*, 23 N. J. 50, 127 A 2d 401 (1955).

Paragraph 3 of the Affidavit of Barbara J. Weaver dated September 16, 1971, submitted to N. J. Supreme Court and to Your Honorable Court by the Respondent Housing Authority states in pertinent part:

> "* * * In addition to publishing the Invitation for Proposals in the newspaper I personally mailed 22 copies of said Invitation to 22 prospective developers in accordance with the Housing Authority's standard practice of mailing said invitations to any person who has previously indicated an interest in acquiring property in a particular project area. * * *"

[Review of Exhibit B of this affidavit reveals that these 22 prospective "developers" included real estate brokers in Newark as well as individuals in Linden, Passaic and East Orange—but *not* the owner and occupier of the land and premises for over 14 years.]

> "* * * No copy of said Invitation was mailed to Mr. and Mrs. Leff because neither one had expressed an interest in purchasing property in the project area. * * *"

> [This mailing was accomplished an *entire year* before the condemnation complaint was served upon the defendants.]

The excerpt from the Urban Renewal Handbook (appended as Exhibit D to the said Barbara J. Weaver affidavit of September 16, 1971) make it abundantly clear

(page 4 2/68) that as a *prerequisite* to an offering or solicitation:

> "Prior to the issuance of an invitation for proposals, land acquisition, site clearance, and project improvement work shall have progressed to the point that title to, or possession under a lease, of the land or property may be delivered to the redeveloper within a reasonable time after his selection."

Shall we turn away from the fact that the advertisement soliciting bids was run a year in advance of instituting condemnation proceedings to acquire the property? Does this comport with the prerequisite? Shall we ignore this?

The thrust here is that the accumulation of inept procedural steps has (1) deprived defendants of the right and opportunity to bid to rehabilitate the land they owned and occupied for over 14 years and (2) deprived the public of intelligible data from which to decide whether or not to become bidders and (3) deprived actual bidders of correct data upon which to predicate design criteria.

Has the public interest been served by such ineptitude?

It is still within the power of this Court, without doing harm to anyone, (these two parcels still lie fallow), to order the award of the contract as to parcels H-9 and H-10 set aside and to order proper readvertisement, notice and solicitation for bids.

If this is done, the defendants seek no more than "consideration as a candidate for selection as . . . [a] developer . . . good-faith evaluation and fair treatment." [*Levin* v. *Bridgewater Township*, 57 N. J. 506, 542 (1971)].

CONCLUSION

Petitioners are the owner and occupant of lot No. 6 of the 7 lots comprising parcel H-9. They occupied lot No. 6 for more than 14 years and conducted a substantial business therefrom. They knew nothing of the above described advertisement, nor, even if they did, could they possibly have connected "Parcel H-9" with their property. They received no personal notice of the Invitation to Bid, although the East Orange Housing Authority gave personal notice to 22 other parties, all strangers to the property.

Petitioners would have qualified as bidders for these parcels. Petitioners would have bid had they known of the Invitation. They still wish the opportunity to bid for the remaining parcels H-9 and H-10.

Petitioners have been deprived of fundamental rights by a procedure which raises a substantial question of its constitutionality. For the reasons submitted, Petitioners pray that this petition for writ of certiorari be granted.

JOSEPH S. SEIDEL, P.A.
22 Park Place
Morristown, New Jersey 07960
(201) 540-0123
Counsel for Petitioners

[APPENDICES FOLLOW]

APPENDIX A

Order of Supreme Court Denying Petition for Certification

(Filed—October 5, 1971.)

SUPREME COURT OF NEW JERSEY

C-134 SEPTEMBER TERM 1971

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE,

Petitioner,

vs.

FLORENCE LEFF, *et als.*,

Defendants and Third-Party Petitioners,

vs.

METRO MOTORS, INC.,

Third-Party Defendant.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon Ordered that the petition for certification is denied, with costs.

WITNESS the Honorable Joseph Weintraub, Chief Justice, at Trenton on the 5th day of October, 1971.

ILLEGIBLE

Acting Clerk of the Supreme Court

APPENDIX B

Order of Appellate Division Denying Motion for Leave to Appeal

(Filed—June 1, 1971.)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION—DOCKET NO. AM-283-70

MOTION NO. M-881-70

BEFORE PART D

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE;
a body corporate & politic,

vs.

FLORENCE LEFF, *et al*,

vs.

METRO MOTORS, INC., a New Jersey corporation.

Moving Papers Filed: May 4, 1971

Date Submitted to Court: May 24, 1971

Date Decided: May 26, 1971

Appendix B

ORDER

This matter having been duly presented to the Court, it is hereby ORDERED as follows:

Motion for Leave to Appeal & for Stay—Denied.

FOR THE COURT:

/s/ VICTOR S. KILKENNY
P.J.A.D.

WITNESS, the Honorable Victor S. Kilkenny, Presiding Judge of Part D, Superior Court of New Jersey, Appellate Division, this 26th day of May 1971.

MORTIMER G. NEWMAN, JR.
Clerk of the Superior Court

APPENDIX C

Order of Law Division for Summary Judgment

(Filed—April 19, 1971.)

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, ESSEX COUNTY
DOCKET NO. L 27170-69

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE,
a body corporate and politic,

Plaintiff,

vs.

FLORENCE LEFF, *et als.*

Defendants and Third-Party Plaintiffs,

vs.

METRO MOTORS, INC., a New Jersey Corporation,

Third-Party Defendant.

This matter having been heard by the Court on cross motions of Plaintiff and Defendant for Summary Judgments pursuant to R. 4:46-1 of the rules governing this Court; and the Court having heard argument of the attorneys for the respective parties, and being of the opin-

ion that the pleadings and briefs on file in this action, together with affidavits submitted in support of and in opposition to the motions of both parties show palpably that there is no genuine issue as to any material fact challenged, and that the Plaintiff, Housing Authority of the City of East Orange, has a right to such judgment as a matter of law;

IT IS on this 19th day of April, 1971, ORDERED that Judgment be entered in favor of the Plaintiff and against the Defendants on Defendants' Answer, Counterclaim and Third Party Complaint; and

BE IT FURTHER ORDERED that Defendants' Application for Summary Judgment be denied.

MELVIN P. ANTELL,
J.S.C. T/A

The undersigned hereby consents to the form of the within Order.

HANNOCH, WEISMAN, STERN & BESSER
By: JOSEPH S. SEIDEL

APPENDIX D

Letter Opinion of Law Division

(Filed—March 30, 1971.)

ESSEX COUNTY COURT

Chambers of
MELVIN P. ANTELL
Judge

COURT HOUSE
Newark, N. J. 07102

March 30, 1971

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East Orange, New Jersey

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Attorney for Metro Motors, Inc.
6 Pompton Avenue
Cedar Grove, New Jersey

Hannoch, Weisman, Stern & Besser, Esqs.
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Attorneys for defendants and Third
Party Plaintiffs
744 Broad Street
Newark, New Jersey 07102

Appendix D

Gentlemen:

Re: *Housing Authority of the City of East Orange* v. *Florence Leff, et als.* Docket No. L-27170-69

In this condemnation action, the court has before it cross motions for summary judgment brought by the plaintiff and by the defendant-third party plaintiff. There is no genuine issue as to any of the following material facts: The defendant has been for some years the record owner of 40-44 Hedden Place, in the City of East Orange, where her husband has carried on a substantial business in corporate form. On April 30, 1970, the plaintiff filed its complaint in condemnation against this property. On April 30, 1969, one year before, the plaintiff advertised for bids on a "fixed price competition" of $53,866.00 for the redevelopment of a land parcel which it designated "H-9". This parcel included the property owned by the defendant. It is also undisputed that a discrepancy exists between the land acquisition map and the land disposal map in that the former shows Parcel H-9 lying completely contiguous with Parcel H-10, whereas the land acquisition map shows a "Lot 7," not to be acquired, as lying between Parcels H-9 and H-10. Following the advertisement on April 30, 1969, the plaintiff entered into a redevelopment contract with third party defendant Metro Motors.

On these facts, the defendant urges that the condemnation action is being capriciously brought and that the redevelopment contract entered into between plaintiff and third party defendant should be nullified and defendant given an opportunity to enter her bid for redevelopment.

Appendix D

These contentions rest upon the claimed obscurity of the advertisement insofar as it described the defendant's property collectively with others in a manner which was unrecognizable to the defendant and, furthermore, that because of the discrepancy between the two maps a prospective bidder would necessarily be misled as to the subject matter of the bid. The combined effect thereof, defendant maintains, is that she was not accorded a fair opportunity to bid on the redevelopment contract for her own property.

The defendant rests these claims for relief upon the authority of cases in which advertisements for bids were found to be patently ambiguous and misleading. *Skakel* v. *North Bergen*, 37 N. J. 369 (1962); *Levin* v. *Warren Township*, 83 N. J. Super. 118 (App. Div. 1964); *Nativo* v. *Hackensack*, 76 N. J. Super. 512 (App. Div. 1962). But these cases do not govern the facts before me insofar as they dealt in all instances with facts arising under public bidding statutes which required the publication of notice. It is conceded that here the plaintiff condemning authority was under no obligation to advertise for bids and was in fact free to negotiate a redevelopment contract with any one or more redevelopers which it might have selected. The course followed by the plaintiff in voluntarily soliciting bids was an option which it pursued for reasons of the public advantage in its having a broader selection of prospective redevelopers from which to chose. Since it was not required to solicit bids, the policy basis underlying the aforementioned authorities are absent and any deficiency in the advertising procedure followed by the plaintiff does not in any way bear on the validity of the redevelopment contract eventually entered into. If, by the ineptness of the advertisement,

plaintiff foreclosed itself from having the benefit of defendant's bid, this is not something for which defendant is entitled to relief. No suggestion of bad faith appears nor is it suggested in what way the institution of condemnation proceedings can be considered "capricious."

For these reasons, it clearly appears that the plaintiff is entitled to judgment as a matter of law. Plaintiff's motion for summary judgment will be granted. Defendant's motion for summary judgment will be denied.

Submit order.

Very truly yours,

MELVIN P. ANTELL

MPA:RSK

LIBRARY
COURT, U. S.

Supreme Court, U. S.
FILED
1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,
Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

REPLY BRIEF AND SUPPLEMENTAL APPENDIX IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,
Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

The following statement appears in counsel's "Brief In Opposition" at page 5:

> "* * * * Upon contacting the Executive Director, interested bidders were given a package of materials known as the Proposal Documents which included Instructions to Redevelopers, and a Dis-

posal Map (Appendix B, page 3a) which shows the exact location of Parcel H-9 including the fact that there were to be no intervening not to be acquired lots between Parcels H-9 and H-10."

Regretably, this is precisely the type of half-truth and misleading information which form the chief bases for petitioners' complaints.

Not reproduced by Respondent is the "Land Acquisition Map, URP-3" which *also* formed a part of the Urban Renewal and Redevelopment Plan (see Supplemental Appendix A hereto). Respondent itself described *this* URP-3 map, (*not* URP-2 reproduced by it), as the source of data as to which properties were to be acquired. (See: Supplemental Appendix B hereto which reproduces pages 1 and 19A of Respondent's Plan). URP-3 does, *indeed*, depict an intervening lot 7 "not to be acquired" between Parcels H-9 and H-10.

Respondent's state of confused facts is quite consistent, since approval by HUD for acquisition of this intervening lot was not obtained by Respondent until long *after* its advertisement for bids in April of 1969. (See letter from HUD, reproduced here as supplemental Appendix C. This letter was not even received by Respondent until June 2, 1969, only four days before bids for the subject parcels were closed).

Respondent, in its brief at page 4, places great emphasis upon the fact that in 1966, three years before publishing the cryptic advertisement, there was notice of a public meeting at which the Redevelopment Plan was "received and approved". But Respondent has previously conceded in an affidavit of one of its officials that the determination to acquire lot 7 was not made until *after* ap-

proval of the Urban Renewal Plan. (See paragraph 2 of Supplemental Appendix D hereto).

At page 5 of its brief, Respondent indicates that had the Housing Authority been aware of any such interest by Petitioners [of the proposed sale of Parcel H-9] it would have sent him [sic] a personal notice just as it did the many other would be potential developers. In whose possession was the knowledge that the parcel was being assembled for sale? Propaganda distributed to petitioners, among others, three years prior to the "blind" advertisement for solicitation of bids, spoke of giving "top priority" to present occupants of the area for relocation within the Urban Renewal area. (See Supplemental Appendix E hereto). Such "opportunity" never came.

Further, the Urban Renewal Plan itself ostensibly contained provisions for owners and occupants to rehabilitate or renew their properties upon conditions to be fixed by the Housing Authority. (See Supplemental Appendix F hereto). Such advice from the Housing Authority was never forthcoming.

The procedural ineptitudes which seemed to have been the rule in this case rather than the exception *ipso facto must* have affected intelligent bidders for these properties; despite the gratuitous remark found at page 5 of Respondent's brief, nowhere to be found in the record, that

> "[t]he Executive Director or a member of his staff was always available to provide additional information or clear up any ambiguities."

How could either "the Executive Director or a member of his staff" have cleared up the ambiguity of the intervening lot for interested bidders, when HUD never ap-

proved its acquisition until June 2, 1969, four days before bids closed?

If the position taken by the East Orange Housing Authority is correct, then every procedural step they took was utterly useless and an exercise in futility—for if *no* error or defect in their procedural methodology is grounds to undo what they have done, then why waste the taxpayers' monies to promulgate and distribute HUD manuals mandating that these procedures be followed; and if *no* errors or defects in the advertising procedure are grounds for setting aside an award—no matter how obvious the potential for stifling competition may be—then why waste the public's funds in advertising at all?

Reliance by counsel for the Housing Authority on the case of *Levin v. The Township Committee of the Township of Bridgewater*, 57 N. J. 506 (1971), is ironic, since that case is indicative of the very type of sequential procedure which was non-injurious to the entire class of potential redevelopers and the public in general. The course of the public officials in Bridgewater Township was to first declare the area blighted and then to commence condemnation proceedings to acquire the property. It is true that the case upholds the proposition that an area may be redeveloped "by a private developer, selected by the Township Committee". (57 N. J. at 542), but just as clearly the majority opinion states:

> "* * * But no official action has been taken which excludes Plaintiff Levin from consideration as a candidate for selection as the overall developer of the Triangle after the blight declaration. In fact, it seems plain from the statements of municipal officials that his application, if made, will receive good-faith evaluation and fair treatment."

In the instant case, however, the Defendants' complaint is *just* that: By the arbitrary, capricious and haphazard method by which and manner in which the Housing Authority selected the redeveloper for parcels H-9, H-10 and H-11 it effectively excluded not only the Defendant but many other potential redevelopers from consideration. All that the Defendants have sought is an opportunity to apply to be a redeveloper and thereafter, "good-faith evaluation and fair treatment", (57 N. J. at 543).

Justice Haneman, in his dissenting opinion in the *Levin* v. *Bridgewater* case (57 N. J. 545 *et seq.*) states that one of the questions projected by the Plaintiffs was:

> Was the municipality's blight declaration a subterfuge to accomplish results not contemplated and authorized by the Blighted Areas Act? The *Leff* case is similar, in that questions are raised as to
>
> (1) why the parcels were offered for sale a year in advance of institution of the condemnation proceedings,
>
> (2) with a cryptic, undecipherable description
>
> (3) and awarded to a private redeveloper at a bargain price, who
>
> (4) proceeded to construct an automobile showroom on only one of the three parcels, leaving the other two undeveloped, yet still owned by it.

To the extent that these happenings smack of procedures and events inconsistent with the greatest good to the public, the *Leff* case is similar to the *Levin* case.

The question has not yet been resolved as to whether any substantive opportunity was given to the defendants or to the members of the public in general to *effec-*

Irvig, bid for redevelopment of the parcels involved. Practically, we are now limited in our discussion to parcels H-9 and H-10, since H-11 now contains the automobile showroom constructed by the third party defendant, Metro Motors, Inc. And how strange it is that Irving Leff stands ready, willing and able to pay more for the remaining 2 parcels H-9 and H-10 than the third party defendant, Metro Motors, paid for all three parcels! How stranger, still, that the East Orange Housing Authority offered the Defendant Florence Leff $55,000 for her lot alone.

As Justice Hanemian indicated in his dissenting opinion in the *Levin* case (page 550):

> "* * * The statute may not be employed to control the type or manner of land use . . . nor may be it employed as a vehicle to select the individual who will ultimately develop the land. Thus, the statute may not be used with the purpose of *controlling* the use of land or *selecting* the developer thereof for any purpose other than to make land available for a use authorized and permitted under other statutes."

> "* * * The harsh and extraordinary power of eminent domain is sought to be employed here, not for a *public use* for a public purpose, but rather for a *private use* for a public purpose. Attendant to such private use is the right of the private developer to obtain a future income and profits from the land so seized. Government is here taking land from one owner by force and giving it to another, on terms that may not benefit the former but will of necessity benefit the latter. The municipality is in effect acting as land broker on behalf of and

> representing a privileged private purchaser. In this aspect of the municipal relationship lies the inherent danger of an abusive discretion. Where, as here, property is forcably taken from one party for the purpose of being transferred to another, thereby excluding the consent of the owner and excluding all other prospective ultimate purchasers and developers except the ones selected by the municipality, the facts which allegedly give rise to that municipal power should be closely scrutinized. * * *"
>
> "* * * Recent disclosure of the conduct of some public officials emphasizes the conclusion that in a world where politics is seldom absent from municipal administration there is a real, and ever present risk that without a severe restriction of the power of municipal acquisition of property by condemnation, an individual without political connections runs the risk of having his property taken from him by force for the benefit of a better connected or more highly regarded individual. A prospective competitive purchaser can similarly be eliminated by the power of the municipality to later convey by a private transaction. That the owner may receive what at the time of taking may be considered reasonable compensation is, of itself, no excuse for a forceable taking."

We are here confronted with precisely the type of treatment which Justice Haneman decried and for which the Leffs seek this Court's mandate to permit them to bid to redevelop the parcel they occupied for 14 years. It is, indeed, farcical for the respondent to state (Pa 35-39 *et seq.*) that the purpose of the circular given to Defendants

and other members of the public in 1966 was only meant to assure "top priority" to residential owners to rehabilitate their homes and to give "top priority" to businessmen for new stores, and that, since Defendants were *industrial* property owners and occupiers they were not entitled to such priority! This is a rather novel approach to non-discriminatory treatment!

If the sincere desire of the East Orange Housing Authority was to foster genuine competition in bidding so as to promote the general welfare of the community, why do they steadfastly refuse to admit they erred and why do they not set about to rectify those errors? How simple it would be to merely readvertise the two remaining Parcels H-9 and H-10 in an intelligible, identifiable manner so as to promote genuine and informed bidding.

Who would be harmed by this procedure?

Metro Motors has already constructed its auto showroom on Parcel H-9—even in the face of this litigation.

The City of East Orange will have the benefit of full and true competitive bidding.

The taxpayers will obtain the benefit of the best possible ratables for the parcels.

Potential bidders will not be stifled by erroneous and misleading information.

The Respondent would be compelled to do no more than it should have done in the first place: follow in logical, sequential and accurate fashion, the procedural steps required by the HUD manual.

If this is done, perhaps the East Orange Housing Authority will be confronted with more than only the two bids previously received for these inherently valuable parcels.

Joseph S. Seidel, P.A.
Attorney for Petitioners.

SUPPLEMENTAL APPENDIX

Supplemental Appendix A

Land Acquisition Map, URP-3

[PHOTOSTAT]

(Opposite) ☞

PAYNE PLACE
MAIN
MAPLE TERRACE
CENTRAL AVENUE
LEGEND
LAND ACQUISITION MAP
FOURTH WARD
URBAN RENEWAL PROJECT
URP 3
EAST ORANGE HOUSING AUTHORITY
EAST ORANGE, NEW JERSEY

BAYON PLACE
NORTH WARD PLANT
HOLLYWOOD PLAZA
MAIN
SOUTH 20TH STREET
DUBOIS AVENUE
MAPLE TERRACE
WINTHROP TERRACE
NINTH AVENUE
CENTRAL AVENUE
GARFIELD PL.
GARDEN STATE PARKWAY
L E G E N
LAND ACQUISITION
FOURTH WARD
URBAN RENEWAL PROJECT

D-26

Supplemental Appendix B

Pages 1 and 19A of Respondent's Plan

Revised Date: 12-14-64

Code Number: R-213

Page Number: Pages 1-19C to replace pages 1-19

FOURTH WARD URBAN RENEWAL PROJECT
East Orange, Essex County, New Jersey

N. J. R-42

CODE R-213

URBAN RENEWAL PLAN, AND AMENDED REDEVELOPMENT PLAN FOR THE FOURTH WARD URBAN RENEWAL PROJECT

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B. DESCRIPTION OF PROJECT	2
C. LAND USE PLAN	4
D. PROJECT PROPOSALS	19A
E. OTHER PROVISIONS NECESSARY TO MEET STATE AND LOCAL REQUIREMENTS	43
F. PROCEDURE FOR CHANGES IN APPROVED PLAN	45

ATTACHED MAPS

Boundary Map, URP 1, dated July 30, 1964

Land Use Map, URP 2, dated July 30, 1964, Revised December 14, 1964

Supplemental Appendix B

Land Acquisition Map, URP-3, dated July 30, 1964, Revised Dec. 14, 1964.

Where the abbreviation LPA (Local Public Agency) is used in this Plan, it is interpreted to be synonymous with the Housing Authority of East Orange which is acting as the Local Public Agency.

Upon failure to meet the special requirement as established for the two disposal portions of Parcel 4 of Block 42, said property will be subject to all provisions of Section D 1b of this Plan.

In the event that the improvements on any or all of the not to be acquired properties are removed, the re-use of that property shall be in accordance with the Land Use Provisions and Building Requirements for new construction outlined under Section C2a and C2b of the Plan where the aggregate land area is ample for the enforcement of those requirements. The requirements of Section C2a and C2b shall also apply to the owner of a not to be acquired property when the owner thereof acquires project land. In the event that the requirements are not realistically applicable to the property or properties so made available, the LPA may make exception to the Land Use Provisions and Building Requirements and may endorse appropriate action for the re-use of said property or properties. Such reconstruction so endorsed shall be in full acordance with all local and applicable State codes, ordinances and building provisions and shall, in the opinion of the LPA, reflect the intent of the Urban Renewal Plan.

Supplemental Appendix B

D. PROJECT PROPOSALS

1. Land Acquisition:

a. Identification of real property proposed to be acquired is shown on the attached Land Acquisition Map, URP 3, dated July 30, 1964. The following data is depicted on the map:

(1) Clearance and Redevelopment including Spot Clearance

(2) Public Facilities

(3) Rehabilitation and Conservation Properties

b. *Statement of Special Conditions under which Properties Designated for Rehabilitation May be Acquired*

Properties designated as subject to the Property Rehabilitation Standards set forth in Section D 2 hereof are shown on the Land Acquisition Map, URP 3, dated July 30, 1964, revised Dec. 14, 1964, and consist of the following: (see attached list). If the owners of such properties are unable or unwilling to comply or conform with the regulations, controls, and restrictions applicable thereto within 1 year from the date of official notification of the property owner by the LPA of the specific deficiencies to be corrected, the LPA, upon a determination by resolution, after due consideration, that the property owner has failed to achieve substantial conformity with the Property Rehabilitation Standards, may acquire such property after thirty (30) days written notice to the owner.

Supplemental Appendix B

The LPA reserves this right to acquire any such non-complying property for a period of three (3) years from the date of approval of the Plan by the local governing body. Upon acquisition of such parcel the LPA may at its option clear such parcel for redevelopment or may dispose of such parcel without demolition of any improvements thereon but expressly subject to the pertinent and appropriate provisions, regulations, controls and restrictions of the Plan.

Code No.

R-213

Supplemental Appendix C

Letter from HUD

Exhibit A

[SEAL]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Widener Building, Philadelphia, Pennsylvania 19107

REGION II

May 29, 1969

In Reply Refer To: 2RQ

Mr. Robert M. Tague
Executive Director
Housing Authority of the
City of East Orange
City Hall
East Orange, New Jersey 07017

Dear Mr. Tague:

Subject: Project No. N. J. R-42 (Fourth Ward Area)
Block 46, Lot 7—Concurrence in acquisition price

Reference is made to your letter of May 2, 1969 which transmitted updated appraisal reports and Form HUD-6144 requesting an approved maximum acquisition price for the subject property.

A review has been made of the pertinent appraisal reports and consideration was given your recommendation on the proposed acquisition price. On the basis of this review, we are concurring in the maximum acquisition price of $40,000 for Block 46, Lot 7, as indicated on the attached Form HUD-6144. Acquisition of real estate is

to be in the fee simple estate, free and clear of all encumbrances.

Sincerely yours,

HARRY I. SHARROTT
Assistant Regional Administrator for Renewal Assistance

Enclosure

RECEIVED
JUN 2-1969
HOUSING AUTHORITY OF
THE CITY OF EAST ORANGE

Supplemental Appendix D

Affidavit of Barbara J. Weaver

SUPREME COURT OF NEW JERSEY

DOCKET NO. 8133

ON PETITION FOR CERTIFICATION TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION

CIVIL ACTION

(In Condemnation)

AFFIDAVIT

EDWARD STANTON, ESQ.
134 Evergreen Place
East Orange, N. J. 07018
(201) 674-5300
Attorney for Plaintiff

HOUSING AUTHORITY OF THE CITY OF EAST ORANGE, a body corporate and politic,

Plaintiff,

vs.

FLORENCE LEFF, *et als*,

Defendants.

STATE OF NEW JERSEY;
COUNTY OF ESSEX, } ss.:

BARBARA J. WEAVER of full age, being duly sworn according to law upon her oath deposes and says:

Supplemental Appendix D

1. I am employed by the Plaintiff Housing Authority of the City of East Orange as an Urban Renewal Supervisor. As such, I am thoroughly familiar with the Urban Renewal Plan for the Fourth Ward Urban Renewal Project and I am charged with the responsibility for coordinating all land acquisition and disposition.

2. Block 46 Lot 7 was originally not scheduled for acquisition and a Land Acquisition Map URP 3 reflects this fact. Subsequent to the approval of the Urban Renewal Plan the Housing Authority determined that Lot 7 should be acquired thereby making Disposal Parcels H-9 and H-10 contiguous and more readily developable. A copy of the letter from HUD approving the acquisition of Block 46 Lot 7 is attached hereto as Exhibit A.

3. The Invitation for Proposals which was published in the newspaper identified the land to be sold by the Housing Authority as Parcels H-9, H-10 and H-11 and further described them as being located in the Fourth Ward Urban Renewal Project Area of the City of East Orange. The Invitation for Proposals stated that "No proposal will be accepted unless the prospective purchaser-developer has first acquired a copy of the proposal documents which may be obtained from the Housing Authority office . . ." In addition to publishing the Invitation for Proposals in the newspaper I personally mailed 22 copies of said Invitation to 22 prospective developers in accordance with the Housing Authority's standard practice of mailing said invitations to any person who has previously indicated an interest in acquiring property in a particular project area. No copy of said Invitation was mailed to Mr. or Mrs. Leff because neither one had expressed an interest in purchasing property in the proj-

ect area. Attached hereto as Exhibit B is a copy of my work sheets evidencing the names and addresses of the persons to whom said Invitation for Proposals was mailed.

4. As prospective developers visited the Housing Authority office for the purpose of obtaining the proposal documents they were given the package of proposal documents which is identified in Paragraph 1 of the Instructions to Redevelopers. Included in said package as 1d was the Land Disposal Map S.D. 5 which shows that Parcels H-9 and H-10 were contiguous to each other and not separated by Acquisition Parcel Block 46 Lot 7. Additional information as to the location, use, etc. of the Parcels being sold was given to the prospective developers in response to any questions which they had at that time or prior to the submission of their proposal to purchase. Attached hereto as Exhibit C is a copy of the Invitation for Proposals and the Instructions to Redevelopers.

5. Attached hereto as Exhibit D are Sections of the Urban Renewal Handbook RHA 7214.1 Chapter 4 Section 1, Pages 1 through 6 and Section 2, Pages 1 through 6.

BARBARA J. WEAVER
Barbara J. Weaver
Urban Renewal Supervisor

Sworn and subscribed to
before me this 16th day
of September 1971.

EDWARD STANTON
Edward Stanton
Attorney at Law of N. J.

Supplemental Appendix E

Clearance Questions and Answers

Housing Authority of the City of East Orange, City Hall, East Orange, New Jersey

CLEARANCE QUESTIONS AND ANSWERS

Question: What is the purpose of Urban Renewal?

Answer: To prevent the spread of blight in older neighborhoods and return them to top condition.

Question: Will all the properties in the 4th Ward Urban Renewal Area be torn down?

Answer: No, the major portion of the area has been designated for rehabilitation.

Question: How were the clearance areas arrived at?

Answer: The studies made by the Housing Authority determined what buildings in the area are run down to a point where it is not realistic to spend the money needed to fix them up. Also, the unfortunate effect of many cars and trucks caused by the Freeway makes clearance of other properties necessary.

Question: Will the home owner in the clearance area be permitted to move his home to a lot in the area?

Answer: Yes, providing the building is structurally sound. The Housing Authority will work out financial arrangements so that it will not cause undue hardship to the owner.

Question: Will there be a time element considered for relocation?

Answer: Yes, normally the Housing Authority will not require anyone to move until they have an acceptable place to relocate. It is expected that several years will be required to complete all necessary relocation.

Question: If my home is a Spot Clearance property in the Rehabilitation Area and I wish to make all necessary

improvements and repairs to meet rehabilitation standards, can my home remain?

Answer: If after discussing thoroughly with the Rehabilitation Staff, the cost of rehabilitating your property, and the structure is basically sound, the staff will work with you in order to assist you in planning a program of returning your structure to top condition.

Question: What would become of the vacant land after the Spot Clearance properties are demolished?

Answer: The land will be available for interested persons to construct new homes or made available to the adjacent owner for purchase to increase his lot size or to create needed parking facilities in the area.

Question: Will preference be given for the sale of the Spot Clearance Lots?

Answer: Yes, top priority will be given persons who have been displaced from the 4th Ward Urban Renewal Area.

Question: What provision will be made for businesses in the clearance area who wish to remain?

Answer: They will be given top priority for the new stores that will be constructed as part of the renewal plans.

Question: What are the biggest problems in relocation?

Answer: 1—The time it takes to find the right location for each person.

2—The inability of many persons to fully comprehend the program.

3—A reluctance on the part of some people to cooperate with the Housing Authority.

Supplemental Appendix F

Special Acquisition Exemption Provisions

-19B-

c. *Special Acquisition Exemption Provisions*

Properties herein scheduled for acquisition and clearance by the LPA may, under the following conditions, be exempted by and at the option of the LPA from clearance under this Plan.

(1) If that property's remaining does not encumber the disposition of previously cleared land or land to be cleared and/or the improvement of previously disposed of land and the rehabilitation of conservable properties to a degree which the LPA feels is harmful or is contrary to the goals of this Plan.

(2) If the owner signs an agreement with the LPA which in effect pledges his commitment to initiate such repairs and/or improvements which are necessary to remove the blighting influences which formed the original basis for its acquisition and to furthermore agree to raise the property to the level of the Property Rehabilitation Standards of this Plan.

Code No.
R-213

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAR 22 1972
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
LINCOLN ELECTRIC PRODUCTS CO., INC.,
Petitioners,

vs.

THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
Respondents.

On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

BRIEF IN OPPOSITION

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Adams Press Corp., 11 Commerce Street, Newark, N. J.—Market 3-3611-12

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IN THE

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OCTOBER TERM, 1971

No. 71-861

FLORENCE LEFF and
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THE HOUSING AUTHORITY OF THE CITY OF EAST ORANGE and METRO MOTORS, INC.,
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On Petition for Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Questions Presented

(1) Whether a Housing Authority can constitutionally contract to sell land in an urban renewal area which

it has the legal authority to acquire but has not yet acquired?

(2) Does the execution of a contract to sell to be acquired land to a private developer without personal notice to the property owner constitute a taking or confiscation of such property without due process of law?

(3) Is due process violated by the Housing Authority's sale of land in an urban renewal area after publication of a notice soliciting proposals to purchase when, in fact, the Housing Authority could have negotiated the sale of said land without having first solicited proposals by public advertisement?

Statement of the Case

Respondent, Housing Authority of the City of East Orange, placed an advertisement in the Newark News on April 30, 1969 soliciting proposals for the purchase and redevelopment of Parcel H-9 in its Fourth Ward Urban Renewal Area. Parcel H-9 consisted of Lots 1 through 7 in Block 46, as well as a portion of a public street to be vacated. Approximately one month later, the Housing Authority selected Metro Motors, Inc. as the successful bidder and subsequently executed a sale and development contract with said developer. Portions of Parcel H-9, including Lot 6 owned by Petitioner, Florence Leff, had not yet been acquired by the Housing Authority at the time the Housing Authority selected Metro Motors, Inc. as the developer.

On April 30, 1970, the Housing Authority filed a Complaint in condemnation against Lot 6 and acquired title thereto on May 7, 1970 after having filed the necessary

Declaration of Taking and deposited the sum of $40,000.00, the estimated value of the property, with the Clerk of the Superior Court of New Jersey.

Despite the fact that the Housing Authority has legal title to Lot 6 and is entitled to possession, the Petitioners have stubbornly refused to vacate the premises thereby preventing the Housing Authority from demolishing the building thereon and conveying the land in a cleared condition as required by its sale contract with the developer.

Reasons for Denying the Writ

Respondent knows of no statute or case law which prohibits a Housing Authority from contracting to convey title to land not yet acquired to a redeveloper in an urban renewal area at some time in the future. Such law, if existent, would cause extensive delay in the completion of an urban renewal project and result in substantially increased costs to the municipality and federal government. The most efficient and least costly method of undertaking an urban renewal project is to select the developer immediately after the finding of blight and approval of the urban renewal plan and prior to the acquisition of lands by the Housing Authority. HUD specifically authorizes this course of action in its Urban Renewal Handbook, RHA 7214.1, Chapter 4, Section 1, wherein it states on page 4:

> "Prior to the issuance of an invitation for proposals, land acquisition, site clearance, and project improvement works shall have progressed to the point that title to, or possession under a lease, of the land or property may be delivered to the redeveloper within a reasonable time after his selection."

The Housing Authority complied with this regulation by acquiring title to Lot 6 approximately one year after solicitating proposals.

Petitioner's property was not acquired or taken by the Housing Authority until May 7, 1970 at which time a Declaration of Taking was filed and the estimated just compensation in the amount of $40,000.00 was deposited with the Clerk of the Superior Court. Up until that time there was no interference with Petitioners' title to or possession of the premises. In fact, the tenant Petitioner continues to remain in possession of the premises to this date.

Petitioners had adequate notice that Lot 6 was to be acquired by the Housing Authority. All the prerequisites to the institution of the condemnation suit were satisfied. The Planning Board held publicly advertised hearings on May 5 and 11, 1966 after having given written notice of same to all propery owners within the project area. Mrs. Leff acknowledged receipt of her certified letter on April 23, 1966. In addition to finding the area blighted, the Planning Board and City Council received and approved the proposed Redevelopment Plan for the area at these hearings. The Redevelopment Plan specifies that Lot 6 is to be acquired, consolidated with other lands and sold as Parcel H-9. Petitioners' property was acquired by condemnation and not by the execution of a sales contract with the redeveloper.

The Housing Authority's advertisement soliciting proposals for the purchase of Parcel H-9 was not inserted in the newspaper for the purpose of giving notice to Petitioner or other property owners that their properties were going to be acquired by the Housing Authority. The ad was for the obvious purpose of attracting bids from developers and sufficiently identified and located the

parcels to be sold for that purpose. Interested bidders were clearly advised to "contact the Executive Director of the East Orange Housing Authority for further information relating to the sale and redevelopment of the within described land." (Invitation for Proposals, Appendix A, pages 1a-2a). Upon contacting the Executive Director, interested bidders were given a package of materials known as the Proposal Documents which included Instructions to Redevelopers, and a Disposal Map (Appendix B, page 3a) which shows the exact location of Parcel H-9 including the fact that there were to be no intervening not to be acquired lots between Parcels H-9 and H-10. The Executive Director or a member of his staff was always available to provide additional information or clear up any ambiguities.

Personal notice of the proposed sale of Parcel H-9 was not given to the Petitioner owner of Lot 6 for two reasons. First, there is no legal requirement to do so, and, second, the owner never indicated an interest in being a developer. Had the Housing Authority been aware of any such interest, it would have sent him a personal notice just as it did to many other would be potential developers.

The authority to acquire and dispose of land for redevelopment purposes as a public use and purpose is clearly established in our law. The New Jersey Constitution, Art. VIII, Sec. III, par. 1 declares:

> "1. The clearance, replanning, development or redevelopment of blighted areas shall be a public purpose and public use, for which private property may be taken or acquired. Municipal, public or private corporations may be authorized by law to undertake such clearance, replanning, development or redevelopment * * *."

Housing Authorities are authorized by the legislative enactment of N.J.S. 55:14A-34 (5) "to sell or lease land so acquired for uses in accordance with the redevelopment plan." More specifically, "The authority may make land in a redevelopment project available for use by private enterprise or public agencies in accordance with the redevelopment plan." N.J.S. 55:14A-41.

The leading case upholding the constitutionality of redevelopment statutes similar to the Local Housing Authorities Law of N. J. (55:14A) is *Berman* v. *Parker*, 348 U. S. 26, 75 S. Ct. 98 (1954). The U. S. Supreme Court declared therein that the acquisition and assembly of property and the sale thereof for housing, commercial or industrial reuse pursuant to a project area redevelopment plan constitutes a public use. The Court went on to say, that once the public purpose had been established, it made no difference that the property of one businessman was taken for the benefit of another businessman.

The N. J. Supreme Court in *Wilson* v. *Long Branch*, 27 N. J. 360 (1958) has adhered closely to the doctrine set forth in the *Berman* case, *supra*, while upholding the constitutionality of the Blighted Areas Act (N.J.S. 40:55-21.1 *et seq.*).

Most recently, the N. J. Supreme Court has stated:

> "Once a proper declaration of blight is made, there is no substance to the contention that the result of the governmental action in selecting a redeveloper is to take property from one individual and turn it over to another in violation of the due process requirements of the Federal Constitution. The Blighted Area Act provides that following a declaration of blight the governing body may, by resolution, agree that a private Corporation or

individual may be chosen to undertake the redevelopment project according to a comprehensive plan created by it. N.J.S.A. 40:55-21.10. In this event, the private redeveloper is really the instrumentality used to accomplish the public purpose. And the possibility that some profit may eventuate therefrom does not render such means unlawful. Neither the Federal nor the State Constitution presents a barrier to such municipal course of action." (Cites *Berman* and *Wilson* cases *supra.*) *Levin* v. *Bridgewater Leasing Corp. et al*, 57 N. J. 506 (1971) at pages 45, 46.

Housing Authorities are authorized to sell lands in a variety of ways including negotiation, auction and competitive bidding after public advertisement (Appendix C, page). As Judge Antell points out in his opinion (Petitioner's Appendix D, page 8a), the Housing Authority was not required to advertise for bids and could have negotiated the sale of Parcel H-9. The intention of the Respondent was to attract the widest interest and obtain the best possible proposal. If any technical, minor deficiencies appeared in its form of advertisement, such defect had little or no effect upon interested prospective bidders.

For these reasons the Respondent respectfully requests that Petitioners' application be denied.

Edward Stanton,
134 Evergreen Place,
East Orange, New Jersey 07018
Counsel for Respondent.

[Appendices Follow]

APPENDIX A

Housing Authority's Invitation for Proposals for the Purchase and Redevelopment of Industrial Lands

Invitation for Proposals

The Housing Authority of the City of East Orange invites proposals for the purchase and redevelopment of one or more of the hereafter described industrial lands located in its Fourth Ward Urban Renewal Project Area:

Parcel Numbered	*Total Area Square Ft.*	*Land Use*	*Fixed Sale Price Sq. Ft*	*Fixed Sales Price*
H-9	85,502	industrial	$.63	$53,866.
H-10	18,325	industrial	.63	11,544
H-11	20,463	industrial	.70	14,324

The above lands are offered for sale and redevelopment either individually or as one parcel pursuant to applicable Federal and State Housing Laws. Specifically, the lands must be redeveloped in accordance with the provisions of the East Orange Urban Renewal Plan which constitutes part of the proposal Documents.

Submission of Proposals

No proposal will be accepted unless the prospective purchaser-developer has first acquired a copy of the Proposal Documents which may be obtained from the Housing Authority Office upon the payment of a non-returnable

fee of $10.00. All proposals must comply with the instructions contained in the Proposal Documents. Proposals to purchase land must be delivered to the Office of the Housing Authority of the City of East Orange, City Hall, East Orange, N. J., prior to 2:00 p.m. DST on Friday June 6, 1969 at which time all Proposals will be opened and read aloud. The successful redeveloper or redevelopers will be required to execute a Contract for Sale of Land substantially in the form of the Contract made a part of the Proposal Document within 30 days after being notified of his selection.

Additional Information

Interested parties may contact the Executive Director of the East Orange Housing Authority for further information relating to the sale and redevelopment of the within described land.

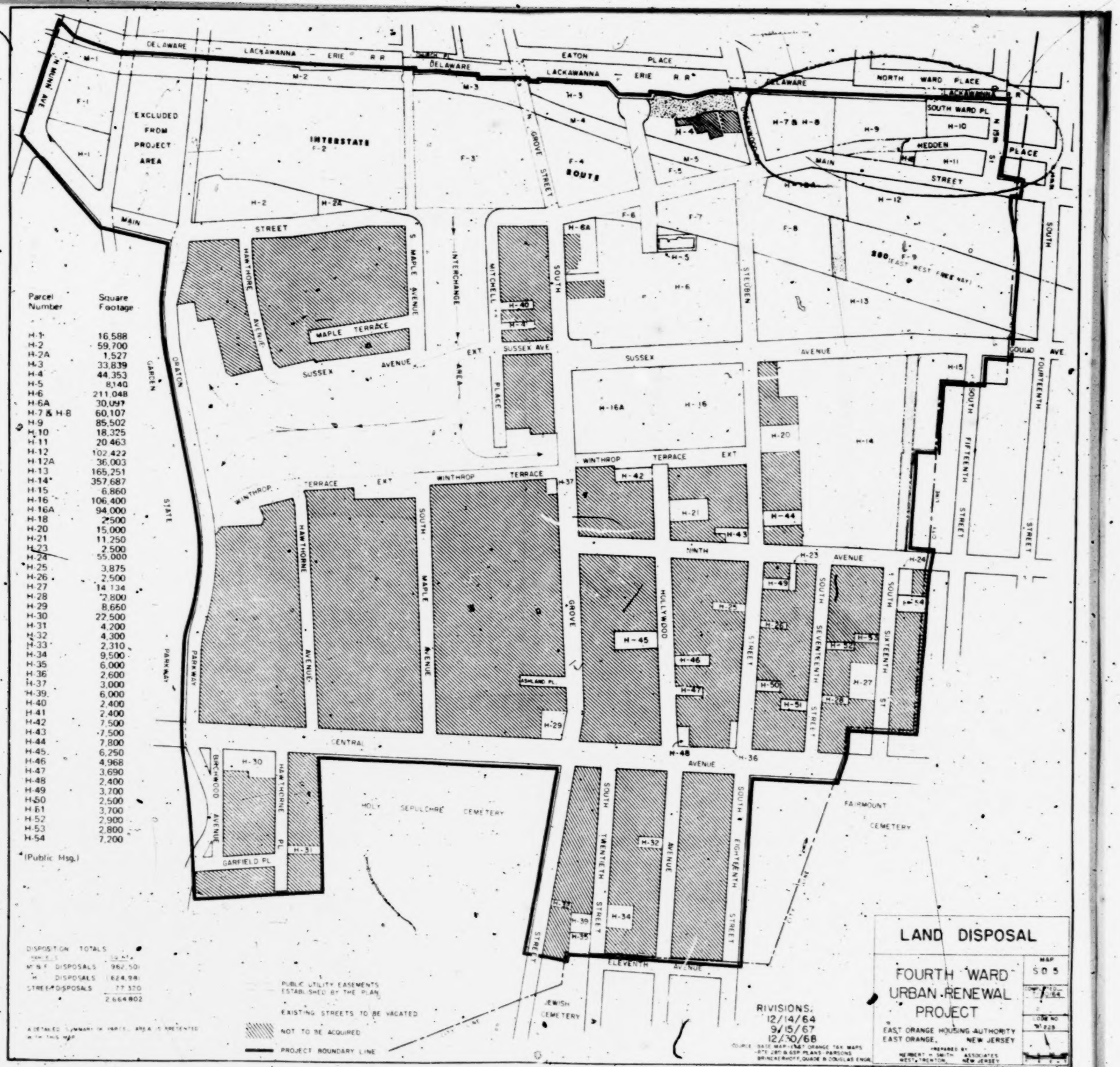
ROBERT M. TAGUE
Executive Director
Housing Authority of the City of East Orange

APPENDIX B

Proposal Document—Land Disposal Map

[PHOTOSTAT]

(Opposite)



Parcel Number	Square Footage
H-1	16,588
H-2	59,700
H-2A	1,527
H-3	33,839
H-4	44,353
H-5	8,140
H-6	211,048
H-6A	30,097
H-7 & H-8	60,107
H-9	85,502
H-10	18,325
H-11	20,463
H-12	102,422
H-12A	36,003
H-13	165,251
H-14*	357,687
H-15	6,860
H-16	106,400
H-16A	94,000
H-18	2,500
H-20	15,000
H-21	11,250
H-23	2,500
H-24	55,000
H-25	3,875
H-26	2,500
H-27	14,134
H-28	2,800
H-29	8,650
H-30	22,500
H-31	4,200
H-32	4,300
H-33	2,310
H-34	9,500
H-35	6,000
H-36	2,600
H-37	3,000
H-39	6,000
H-40	2,400
H-41	2,400
H-42	7,500
H-43	7,500
H-44	7,800
H-45	6,250
H-46	4,968
H-47	3,690
H-48	2,400
H-49	3,700
H-50	2,500
H-51	3,700
H-52	2,900
H-53	2,800
H-54	7,200

*(Public Msg.)

DISPOSITION TOTALS

	SQ. FT.
M.S.F. DISPOSALS	962,501
H DISPOSALS	624,981
STREET DISPOSALS	77,320
	2,664,802

A DETAILED SUMMARY BY PARCEL AREA IS PRESENTED WITH THIS MAP

APPENDIX C

Standard Methods of Offering Land to Private Developers

URBAN RENEWAL HANDBOOK
RHA 7214.1
LAND MARKETING AND REDEVELOPMENT
CHAPTER 4 SECTION 1

CHAPTER 4. SELECTION OF REDEVELOPERS

SECTION 1. STANDARD METHODS OF OFFERING LAND TO PRIVATE REDEVELOPERS

Six Standard Methods

HUD has established six standard methods for offering project land to private redevelopers for redevelopment:

(1) Fixed-Price Competition—The price is announced in advance. Competition is based on factors other than price, such as design, qualifications and organization of the redeveloper, benefits to the community, rents or sales prices, or value of the improvements to be provided by the redeveloper.

(2) Competition-Negotiation Combination—The availability of the land is made known by public announcement, but selection is made after negotiation with one or more redevelopers whose initial proposals have been determined to be most acceptable. A public hearing on the proposal is required prior to execution of the contract.

(3) Sealed Bids—Sealed bids are invited under specific provisions as to the place and cutoff date and

time for the receipt of proposals and for opening and reading of bids.

(4) Public Auction—Land is offered at public auction, with a publicly-announced minimum bid. A variation provides for execution, prior to announcement of the auction, of a firm agreement with a potential redeveloper who agrees to make a specified minimum bid which the LPA agrees to accept if there are no higher bids.

(5) Predetermined Prices for Subdivision of Small Parcels—The LPA establishes the schedule of prices for a subdivision of small parcels of similar character and proposed uses, and then offers the parcels primarily to separate purchasers.

(6) Direct Negotiation With One Or More Redevelopers—In cases where direct negotiation is permitted by law, the LPA may negotiate directly with a redeveloper or redevelopers.

Procedures After Choosing Method

If the LPA has met certain prerequisites, and has elected to adopt one of the standard methods of offering land to a private redeveloper, it may offer the land in accordance with the procedures defined below, and in Section 2 of this Chapter, without obtaining prior concurrence of the Regional Office.